

DEPARTMENT OF THE INTERIOR**Fish and Wildlife Service****50 CFR Part 17****RIN 1018-AB74****Endangered and Threatened Wildlife and Plants; Emergency Rule To Establish Additional Manatee Protection Areas in Kings Bay, Crystal River, Florida****AGENCY:** Fish and Wildlife Service, Interior.**ACTION:** Emergency Rule.

SUMMARY: This emergency rule, in conjunction with other required actions, establishes, for the second year, three additional manatee (*Trichechus manatus*) sanctuaries and expands an existing sanctuary in Kings Bay, Crystal River, Florida. This action prohibits all waterborne activities and prevents the "taking" of manatees by harassment resulting from such activities in the protected areas during the winter months. The number of sanctuaries in Kings Bay is expanded from three (10.7 acres) to six (39.0 acres) to accommodate an increasing number of manatees using the area each winter, and to offset the harassment from increasing public use. The emergency action provides protection for the manatees for 120 days. A proposed rule to provide permanent sanctuaries will be published and will provide an opportunity for public comment. This action is taken under the authority of the Endangered Species Act of 1973, as amended, and the Marine Mammal Protection Act of 1972.

In accordance with 50 CFR 17.106, the effective date for this action was established through a legal notice published in the "Citrus County Chronical" on November 14, 1992.

EFFECTIVE DATE: November 15, 1992 through March 15, 1993.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Jacksonville Field Office, U.S. Fish and Wildlife Service, 3100 University Blvd. South, suite 120, Jacksonville, Florida 32216.

FOR FURTHER INFORMATION CONTACT: Robert O. Turner at above address (902/232-2580) or Vance Eaddy, Senior Resident Agent, U.S. Fish and Wildlife Service, 9721 Executive Center Dr., suite 206, St. Petersburg, Florida 33702, 813/893-3651.

SUPPLEMENTARY INFORMATION: Crystal River is a short tidal river on the west coast of Florida. Forming the

headwaters of Crystal River is Kings Bay, a lake-like body of water fed by many freshwater springs. These springs, because of their year-round temperature of over 74° F, provide an essential warm-water wintering area for West Indian manatees (*Trichechus manatus*), a federally listed endangered species.

During cold weather, many of the manatees wintering in Kings Bay congregate in an area known as the main spring or Kings Spring, located just south of Banana Island. This location is also a favorite site for skin and scuba divers, who come to Kings Bay for the clear, calm conditions favorable for learning diving techniques, coupled with the opportunity to "swim with the manatees". Diver use of this area is especially heavy during the cold winter months when diving is impractical through most of the northern states, and when the opportunity for manatee encounters is greatest.

The concurrent use of the main spring area by divers and manatees during cold weather creates a problem for manatees. Manatees are shy, harmless creatures that are easily driven away from warm springs by human activity (Buckingham 1990).

A limited number of manatees (about 15) used the springs in the 1970's prior to the establishment of the Banana Island Sanctuary. They seemed to tolerate and even enjoy some human contact. These "tame" manatees readily approached divers and allowed themselves to be petted and lightly scratched (Hartman 1979, Powell and Rathbun 1984). By 1980, when the first permanent manatee sanctuaries were established, the number of manatees wintering in the bay had increased to just over 100. This increase was greater than could be accounted for by reproduction, so it was apparent that some manatees were immigrating from other areas (Powell and Rathbun 1984). The number of manatees that chose to interact with the public increased only slightly.

Manatee use of Kings Bay now exceeds 240 animals (FWS unpublished data). A majority of manatees currently using the spring do not tolerate close human contact, and leave the warmer spring waters when humans approach too closely. They disproportionately spend their time in the existing sanctuaries regardless of weather conditions, in direct relationship to the number of boats present (Buckingham 1990).

Efforts have been made to make divers, snorkelers, and boaters aware of the manatee harassment problem. Visitors have been instructed through posters, brochures, and dive shop

personnel that they should not aggressively pursue manatees or drive them from the springs. As a group, most people have been very cooperative in this regard. Though most conscientiously try to avoid harassing manatees, they seek the animals out and approach them to observe them and a few consistently pet them. Although a few manatees tolerate and occasionally invite attention, most manatees appear to find the situation intolerable, and they alter their behavior accordingly. At times, the sheer number of humans concentrated in a relatively confined area forces all the manatees to seek less disturbing conditions.

The largest numbers of manatees are found at the main spring at night or during the early morning. After sunrise, when the divers begin arriving at the spring, those manatees least able to tolerate human crowding begin leaving the spring. As greater numbers of divers arrive, more manatees leave (FWS unpublished data). On days when the temperatures of the surrounding waters are not excessively cold, this may not be critical, although it still alters the manatee's natural behavior. On days when surrounding water temperatures are below 68 °F, manatees may begin to show some signs of cold water stress such as reduced metabolic rate and cessation of feeding. If cold stress continues long enough, manatees will die.

Research shows that the presence of waterborne users causes manatees to leave the spring heads in favor of the protected sanctuaries regardless of weather conditions. On days when there is low diver turnout, a greater proportion of manatees remain in the springs (Buckingham 1990). Observations of other wintering areas, such as Blue Spring State Park, show that, left to their own devices, most manatees will remain in warm water throughout the day during cold weather periods. Activities that cause manatees to leave can, therefore, be considered "harassment" which interferes with normal "sheltering" habits of the animal. Harassment is a violation of both the Endangered Species Act, as amended, and the Marine Mammal Protection Act.

Currently, manatees are able to escape divers, swimmers, and boaters by moving into three sanctuaries established in 1980—Banana Island, Sunset Shores, and Magnolia Springs. The Banana Island sanctuary is located near the main spring, Kings Bay, and is relatively warm in relation to surrounding waters. Sunset Shores sanctuary is still within the southern part of the bay and provides a feeding

and resting area in fairly warm water. The Magnolia Springs sanctuary is located in a canal development adjacent to Kings Bay and contains a smaller spring. The number of manatees using Kings Bay has increased from 100 in 1980 to 246 in 1990. Although it might appear from the increasing numbers of manatees that additional protection is not needed, this is not the case. Manatees are losing habitat elsewhere, and Kings Bay is becoming more and more essential as one of the last natural warm water areas with abundant food resources. Additional sanctuaries are essential to insure adequate undisturbed natural areas in Kings Bay where manatees may meet most of their needs, including warm water, food, and areas for resting and socializing.

The economic importance of Kings Bay, and especially the main spring, to Crystal River and Citrus County centers around the sports or SCUBA diving, snorkeling, and boating. The area is internationally known as a desirable location for winter diving. The presence of manatees creates a special attraction which dive shop owners exploit by advertising their facilities as a place where one can, "swim with the manatees". The tourism industry created by divers coming to Crystal River is significant and total sales at five dive shops and three motels more than doubled between 1980 and 1986, with the "manatee season" accounting for 28 to 53 percent of their sales for the entire year (Milon in prep.). Due in part to national publicity manatees have recently received, the number of divers visiting Kings Bay increased to about 60,000–80,000 in the winter of 1990–91, double the number in 1980 (FWS unpublished data). This rapid increase in popularity is likely to continue, significantly affecting manatees.

The Service intends to provide manatees needed winter protection without adversely affecting diving and other waterborne activities so important to Crystal River. Aerial survey data available on manatee distribution within Kings Bay suggest that strategically placed manatee sanctuaries could provide manatees warm water refugia and feeding and resting areas free from harassment without causing a major disruption of current recreational patterns (Kochman et al. 1985, Buckingham 1990).

Therefore, the Service is creating additional sanctuaries in Kings Bay to provide manatees relatively undisturbed habitat during the cold weather months. These sanctuaries exclude all waterborne activities by humans from November 15 through March 31. The chosen sanctuary areas have been

carefully selected to avoid excluding divers from their favorite sites. The Service believes that, given these added refugia, manatees will not be forced to leave the warm water necessary for their survival and will be able to feed, rest, and socialize without being harassed.

Reasons for Emergency Determination

In deciding to implement this rule, the Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species. Based on this evaluation, the preferred action is to establish additional sanctuaries in Kings Bay, Crystal River, Florida on an emergency basis. Since the number of manatees using the area has more than doubled in the last 10 years, and since there has been a large increase in the number of visitors, the existing sanctuaries are insufficient to shelter the current manatee population. Without sufficient space, food, rest, and freedom from harassment, a significant proportion of the remaining population of Florida manatees could be at considerable risk if upcoming cold temperatures confine them to Kings Bay for any length of time. To protect manatees until the Proposed Rule and Final Rule are completed, the Service believes it is critical to establish additional manatee sanctuaries on an emergency basis.

The authority to establish emergency manatee protection areas is provided by the Endangered Species Act of 1973, as amended, and the Marine Mammal Protection Act, and is codified at 50 CFR, Part 17, Subpart J. Under these regulations the Director may establish, manatee protection areas whenever there is substantial evidence of imminent danger of a taking (including harassment) of one or more manatees, and when such establishment is necessary to prevent such a taking.

The sanctuary addition at Magnolia Springs in Paradise Isle expands the current Magnolia Springs Sanctuary by 1.7 acres. This short, horseshoe-shaped section of canal joins Kings Bay and is fed by auxiliary springs. The sanctuary will provide good protection for a small number of manatees which currently use the area for giving birth, resting, and as a warm water refuge.

The sanctuary on the north and east sides of Buzzard Island creates an 18.0-acre sanctuary along the northwestern edge and down the length of the east side of Buzzard Island. This sanctuary is primarily used by manatees as a feeding area, since it has limited warm water input but contains abundant vegetation.

The sanctuary at Tarpon Springs creates a 4.6-acre sanctuary along the

northwestern side of Banana Island. It contains a small spring and is used as a warm water, feeding, and resting area.

The 4.0-acre sanctuary on the north side of Warden Key is used primarily as a feeding area.

A standard survey of the sanctuary areas has been performed. All of the sanctuary areas are delineated with buoys.

Public Comments Solicited

The service intends that any final action be as effective as possible. Therefore, the opportunity for the public, other concerned governmental agencies, the scientific community, industry, or any other interested party to provide comments or suggestions concerning the rule will be solicited in conjunction with the proposed rule.

Final promulgation of the rule will take into consideration all comments and any additional information received by the Service.

National Environmental Policy Act

An Environmental Assessment has been prepared in conjunction with this rule. It is on file in the Service's Jacksonville Field Office, 3100 University Blvd. South, suite 120, Jacksonville, Florida 32216 and may be examined by appointment during regular business hours. This assessment forms the basis for a decision that this is not a major Federal action which would significantly affect the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969.

References Cited

Buckingham, C.A. 1990. Manatee response to boating activity in a thermal refuge. MS Thesis. University of Florida, Gainesville, Fla.

Kochman, H.I., G.B. Rathbun, and J.A. Powell. 1985. Temporal and spatial distribution of manatees in Kings Bay, Crystal River, Florida. J. Wildl. Manage. 49(4):921-924.

Hartman, D.S. 1979. Ecology and behavior of the manatee (*Trichechus manatus*) in Florida. Am. Soc. Mamm. Special Publ. No. 5. 153 pp.

Milton, W. In prep. Economic activity associated with recreational diving in Kings Bay, Crystal River, Florida.

Powell, J.A., and G.B. Rathbun, 1984. Distribution and abundance of manatees along the northern coast of the Gulf of Mexico. Northeast Gulf Sci. 7:1-28.

Author

The primary author of this emergency rule is Robert O. Turner, Manatee Coordinator (see Addresses section above).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Regulation Promulgation

PART 17—[AMENDED]

Subpart J of part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

1. The authority citation of part 17 continues to read as follows:

Authority: 16 U.S.C. 1361-1407; 16 U.S.C. 1531-1544; 16 U.S.C. 4201-4245; Pub. L. 99-625, 100 Stat. 3500; unless otherwise noted.

2. Section 17.108 is amended by revising paragraph (a)(3), adding paragraphs (a)(4), (a)(5), and (a)(6), and revising the map at the end of this section to read as follows:

§ 17.108 List of designated manatee protection areas.

(a) * * *

(3) A tract of submerged land, lying in Sections 21 and 28, Township 18 South, Range 17 East in Citrus County, Florida, more particularly described as follows: All of the submerged land lying within the mean high water line of a canal bordering the western, northern, and eastern sides of Paradise Isle Subdivision, as recorded in Plat Book 3, Page 88 of the Public Records of Citrus County, Florida; bounded at the western exit by a line drawn between the southwestern corner of Lot 7 of said Paradise Isle Subdivision and the southeastern corner of Lot 22 of Springs O'Paradise Subdivision, Unit No. 3, as recorded in Plat Book 3, Page 70 of said Public Records; and bounded at the eastern exit by an easterly extension of the south boundary of said Paradise Isle Subdivision; Containing 3.4 acres, more or less.

(4) A tract of submerged land, lying in Sections 28 and 29, Township 18 South, Range 17 East in Citrus County, Florida, more particularly described as follows: For a point of reference, commence at the southwest corner of said Section 28; Then go N 06° 01' 23" W for 4466.90 feet to a 10-inch diameter concrete monument marking the POINT OF BEGINNING; Then go N 10° 05' 38" W for 477.32 feet to a 10-inch diameter concrete monument with an attached buoy; Then go N 37° 34' 41" E for 651.07 feet to a 10-inch diameter concrete monument with an attached buoy; Then go S 73° 26' 46" E for 634.10 feet to a 10-inch diameter concrete monument with an attached buoy; Then go S 17° 50' 16" E for 1691.53 feet to a 10-inch

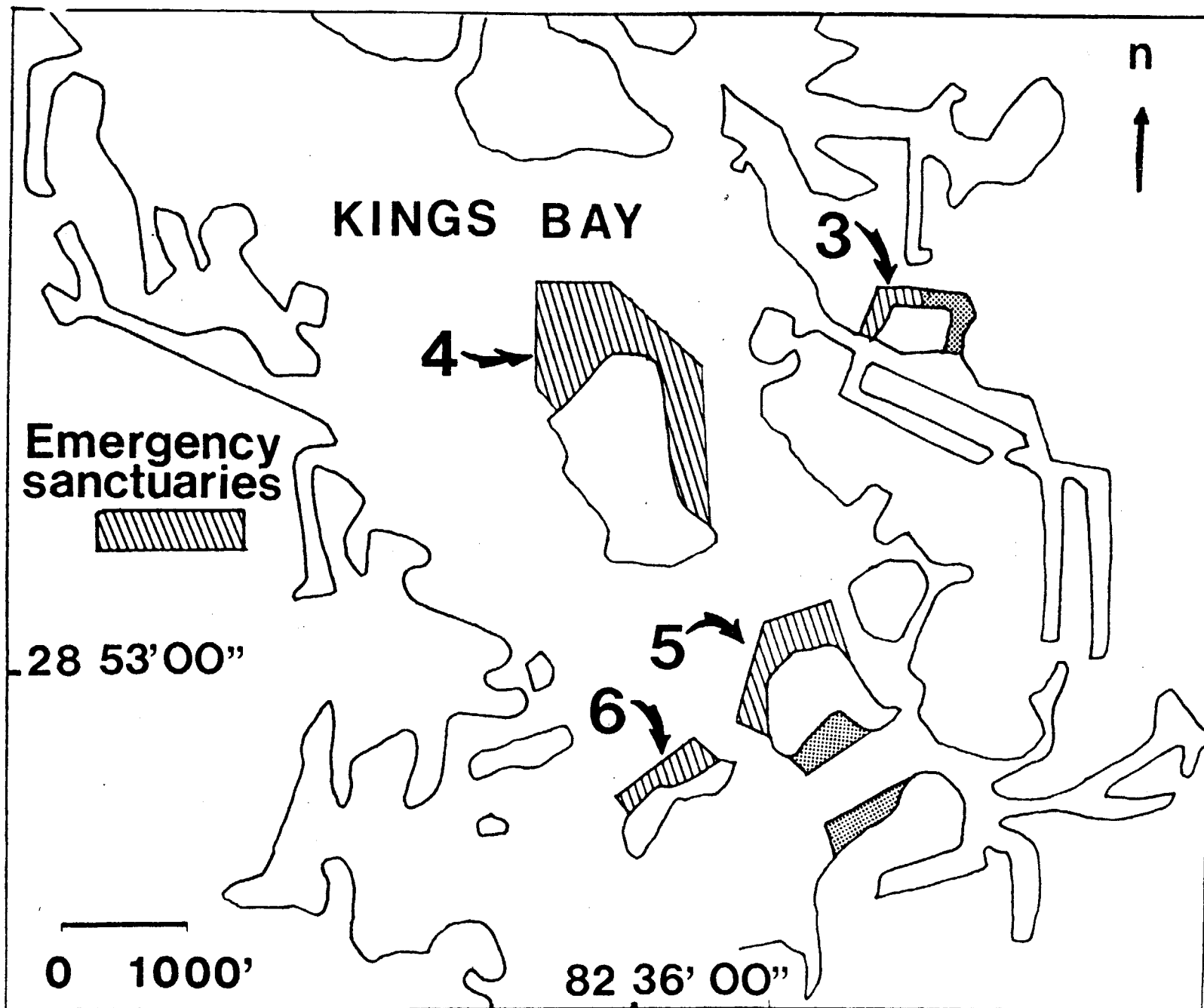
diameter concrete monument with an attached buoy; Then go S 71° 48' 58" W for 117.87 feet to a 10-inch diameter concrete monument with an attached buoy; Then continue S 71° 48' 58" W for 5 feet more or less to the mean high water line of Buzzard Island; Then follow said mean high water line northerly and westerly to a point lying S 10° 05' 38" E of the point of the beginning; Then go N 10° 05' 38" W for 5 feet more or less to the point of beginning; Containing 18.0 acres, more or less.

(5) A tract of submerged land, lying in Section 28, Township 18 South, Range 17 East in Citrus County, Florida, more particularly described as follows: For a point of reference, commence at the southwest corner of said Section 28; Then go N 28° 55' 06" E for 2546.59 feet to a 4-inch diameter iron pipe marking the POINT OF BEGINNING; Then go N 44° 23' 41" W for 282.45 feet to a 10-inch diameter concrete monument with an attached buoy; Then go N 33° 53' 16" E for 764.07 feet to a 10-inch diameter concrete monument with an attached buoy; Then go S 31° 51' 55" E for 333.22 feet to a 4-inch diameter iron pipe; Then continue S 31° 51' 55" E for 5 feet more or less to the mean high water line of Banana Island; Then go westerly along said mean high water line to a point lying S 44° 23' 41" E from the point of beginning; Then go N 44° 23' 41" W for 5 feet more or less to the point of beginning; Containing 4.6 acres, more or less.

(6) A tract of submerged land, lying in Section 28, Township 18 South, Range 17 East in Citrus County, Florida, more particularly described as follows: For a point of reference, commence at the southwest corner of said Section 28; Then go N 06° 43' 00" E for 1477.54 feet to a 10-inch diameter concrete monument marking the POINT OF BEGINNING; Then go N 06° 24' 59" W for 251.66 feet to a 10-inch diameter concrete monument with an attached buoy; Then go N 65° 41' 12" E for 637.83 feet to a 10-inch diameter concrete monument with an attached buoy; Then go S 55° 40' 52" E for 272.86 feet to a 10-inch diameter concrete monument; Then continue S 65° 15' 06" W for 857.22 feet to the point of beginning; containing 4.0 acres, more or less.

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Dated: January 7, 1993.

Richard N. Smith,

Deputy Director, Fish and Wildlife Service.

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